

Remarks

Applicants wish to thank Examiner Barbara Burgess for the courtesies extended during the telephone interview with Applicant's representative Bob Sabourin, reg. no. 35,344 on April 12, 2011. In that interview the patentability of the claims was discussed relative to the applied references.

Claims 1-24 and 26-42 are pending in this application. Claims 2, 6, 9-12, 15-24, 27, 33 and 34 have been amended in various particulars as indicated hereinabove. New claims 35-42 have been added to alternatively define the invention. Claims 35-40 have been added to highlight specific features of original claims 11 and 22 which are not disclosed in the applied references.

Support for new claims 41-42 is found in Figures 4, 5 and 11, and in the specification at paragraphs 8, 9, 22, 23, 29, and 81, et seq. No new matter has been added to the application.

Claim 2 was rejected under 35 U.S.C. 101 as being non-statutory. Claim 2 has been amended to overcome this rejection by adding structural language to the various components of the claim.

Claims 2 and 10 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 2 and 10 have been amended to overcome this rejection. Note that "an indication" in line 3 of claim 2 provides antecedent basis for the subsequent use of "the indication" in the claim.

Claims 1-8, 10-23 and 25-27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Van Der Schaar (hereinafter "Van," US Patent Publication 2003/0135863 A1) in view of Feuerstraeter (hereinafter "Feu," US Patent Publication 2003/0123393 A1) and in further view of Heller (hereinafter "Heller," US Patent Publication 2005/0163073 A1). Claims 9, 24 and 28-34 were rejected under 35 U.S.C. 103(a) as being unpatentable over Van in view of Feu and in further view of Heller and

further in view of Syed (US Patent Publication 2003/0084108). These rejections are respectfully traversed for the following reasons.

Page 4 of the Office Action dated 12/21/2010 (hereinafter the “Action”) addresses pending claim 1 by stating that Van teaches “the transmitting device transmitting the second part of the content transmission in the network in accordance with the predetermined transport parameters to the destination”, citing paragraphs [0068, 0070] of Van. However, the “transport parameters” of Van are adjusted according to real time data (not predetermined data as in our invention) since the MC-FGS stream is adjusted according to the required bandwidth of the number of listening devices while the system is online. In Van, the number of listening devices is determined in real time, and therefore is not established beforehand. Pending independent claim 1 uses “predetermined transport parameters” for transmission in contrast to Van who calculates or determines the necessary bandwidth parameters “on the spot” or in real time upon establishing the number of listening devices that are online.

The above argument is strengthened and verified by the fact that Van does not disclose the use of a table or similar storage unit to store the transport parameters - as recited in pending claim 1. Van does not disclose a table which includes the parameters since Van’s transport parameters are not predetermined - they are processed in real time. The Action subsequently combines Heller with Van to provide a table.

In order to determine the obviousness of a claim, the Supreme Court requires a reasoned analysis that must include articulating a rationale, stating findings of fact, and providing a reasoned explanation for application of the facts to yield obviousness (KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398 (2007) (“KSR”).

Applicants contend that the above 103 rejection is improper. Rather than articulating a reasoned rationale for going forward with the rejection and subsequent combinations, the Action jumps back and forth between numerous references in a sporadic fashion attempting to piece together various components.

Item #4 of the Action declares that Van discloses:

- receiving a first part of a content transmission;
- receiving an indication of transport parameters;
- receiving a second part of the content transmission;
- the transmitting device transmitting the second part of the content transmission in the network *in accordance with the predetermined transport parameters* to the destination, citing paragraphs [0068, 0070] of the specification.

The Action continues by stating that Van does not disclose “receiving an indication of predetermined transport parameters in the network, the indication being contained in the received first part of the content transmission and the indication specifying an increased transmission speed for at least a duration of the content transmission”. Feu is combined with Van to overcome this admitted shortcoming.

The Action then states that Van in view of Feu does not disclose “setting up and storing entries in a switching table identifying the content transmission based on the content provider and the destination, the entries in the switching table storing the predetermined transport parameters specified by the indication” and “Accessing the switching table to determine the predetermined transport parameters for the content transmission”. Heller is combined with Feu and Van to overcome the absence of a switching table.

Although the Action admits that Van does *not disclose a switching table*, the Action avers that Van does teach transmitting the second part of the content transmission *according to the predetermined transport parameters*. This is impossible since these parameters are stored (according to pending claim 1) in a switching table which is admittedly not present in Van.

In sum according to the Action,

- Van teaches some elements of claim 1, including a transmitting step that requires access to parameters in a switching table
- But Van does not disclose a switching table
- So Heller is combined to teach the switching table
- Then *after* Heller is combined with Van, that combination provides the parameters stored in a table, so that Van can provide the transmitting step that the Action says it teaches before the combination with Heller.

Applicants contend that the above reasoning is improper under KSR to sustain a 103 rejection of claim 1. Hence it is believed that claim 1 and all claims dependent thereon are allowable. The same arguments apply to independent claim 25 and claims dependent thereto, which are believed to be allowable.

Furthermore, the subject matter of new claims 35-41 is allowable as not disclosed in any of the cited references. Claim 41 for example discloses the receipt of an indication of predetermined transport parameters along with the maintenance of the switching table, followed by the transmission based on the parameters from the table. As discussed above, this would not have been obvious from the applied references.

A Notice of Allowance is respectfully solicited. Should any questions arise, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

By /grant houston/
J. Grant Houston
Registration No.: 35,900
Tel.: 781 863 9991
Fax: 781 863 9931

Lexington, Massachusetts 02420
Date: April 27, 2011